

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 \*\*\*

9  
10 PEGGY ANGLETON, an individual,

11 Plaintiff,

12 vs.

13 FCPT RESTAURANT PROPERTIES, LLC;  
14 GMRI, INC.; and DOES I-XX; ROE  
15 CORPORATIONS I-XX; DOE ENGINEERING  
16 COMPANIES I-XX; ROE CONSTRUCTION  
17 COMPANIES I-XX; and DOE MANAGEMENT  
18 FIRMS I-XX, inclusive,

19 Defendants.  
20 /

Case No: 3:19-cv-0071-LRH-CBC

**STIPULATION AND ORDER TO**  
**REMAND ACTION**

21 COMES NOW, Plaintiff, PEGGY ANGLETON, and Defendants, FCPT  
22 RESTAURANT PROPERTIES, LLC and GMRI, INC., by and through their respective  
23 counsel of record, and hereby stipulate and agree as follows:

24 1. Plaintiff filed an Amended Complaint in the Second Judicial District Court  
25 on January 10, 2019 (Document #1-1);

26 2. Defendants filed a Notice of Removal on February 8, 2019 (Document #1)  
27 removing this action from the Second Judicial District Court;

28 3. The asserted basis for Defendants removal was original federal question  
jurisdiction “because this matter involves a question of federal law under the Americans

1 With Disability Act (“ADA”).” (Doc. 1, Paragraph 7).

2 4. Plaintiff assert that this is a personal injury matter and that:

3 A complaint alleging violation of a federal statute as an element of  
4 a state cause of action, when Congress has determined that there  
5 should be no private federal cause of action for the violation, does  
6 not state a claim ‘arising under the Constitution, laws or treaties of  
the United States.’ Merrell Dow Pharms. Inc. v. Thompson, 478  
U.S. 804, 106 S.Ct. 3229 (1986).

7 5. Plaintiff also asserts that the 9<sup>th</sup> Circuit Court of Appeals has found that  
8 “Federal question jurisdiction over a state-law claim is not created just because a  
9 violation of federal law is an element of the state law claim” in the specific context of  
10 alleged ADA violations. See Wander v. Kaus, 304 F.3d 856, 859 (2002)(finding no  
11 federal-question jurisdiction when ADA violations are alleged as the basis for state law  
12 claims).  
13

14 6. Therefore the parties stipulate to remand this action to the Second Judicial  
15 District Court of the State of Nevada, and that upon remand the parties stipulate to  
16 Plaintiff filing a Second Amended Complaint removing her Third Cause of Action  
17 (Unlawful Discrimination and Deprivation of Civil Rights) to remove any doubt as to the  
18 federal question jurisdiction issue.  
19

20 7. The parties further stipulate and agree that each party will bear their own  
21 attorneys’ fees and costs with respect to the removal and subsequent remand of this  
22 action pursuant to this Stipulation and Order; and  
23

24 ///

25 ///

26 ///

27 ///

8. This Stipulation renders all motions pending before this Court moot.

DATED this 26<sup>th</sup> day of February, 2019.      DATED this 26<sup>th</sup> day of February, 2019.

VILORIA, OLIPHANT, OSTER  
& AMAN L.L.P.

LEWIS BRISBOIS BISGAARD  
& SMITH LLP

By: /s/ R. Shawn Oliphant  
R. Shawn Oliphant, Esq.  
Nevada Bar No. 6441  
Attorneys for Plaintiff

By: /s/ Mary-Ann S. Ellis  
Mary-Ann S. Ellis, Esq.  
Nevada Bar No. 12427  
Attorneys for Defendants

## ORDER

The Court having reviewed the Stipulation to Remand in the above-captioned action and good cause appearing, hereby ORDERS as follows:

1. The Stipulation to Remand is hereby GRANTED; and

2. The U.S. District Court for the District of Nevada, Case No. 3:19-cv-0071-LRH-CBC captioned, *Peggy Angleton v. FCPT Restaurant Properties, LLC, et al.*, is hereby REMANDED to the Second Judicial District Court, Washoe County, Nevada, Case No. CV18-02311.

DATED this 28th day of February, 2019.

LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE